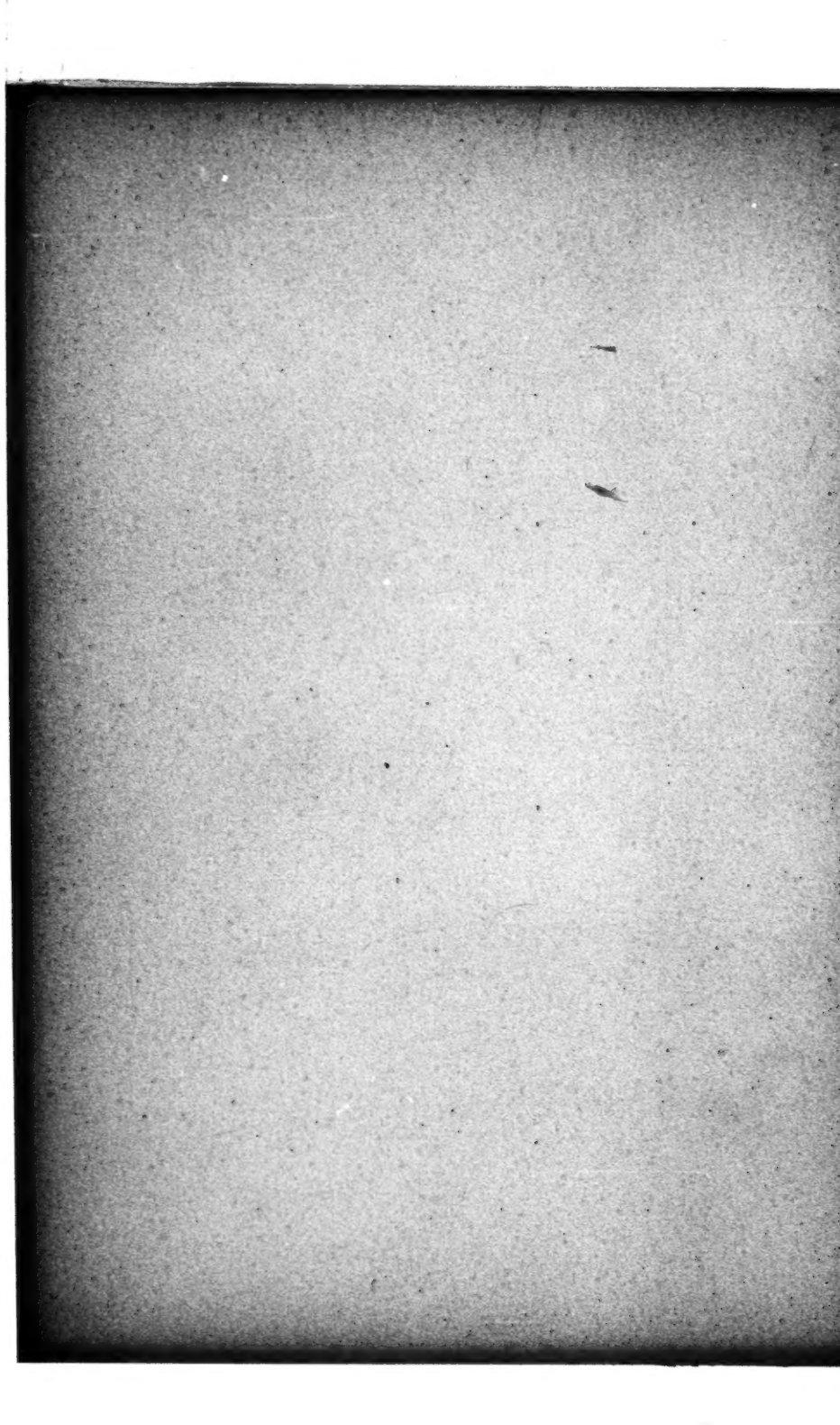

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 72-6050

LAURENCE H. FROMMHAGEN,
Appellant

v.

EDMUND G. BROWN, JR.,
Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BRIEF OF APPELLANT

LAURENCE H. FROMMHAGEN
In Propria Persona
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JURISDICTION

Frommhagen asserts and incorporates by reference the jurisdiction alleged in the Brief of Appellants in *Thomas Tone Storer v. Edmund G. Brown, Jr.*, No. 72-812, presently before this Court.

OPINION BELOW

The Opinion of the District Court is shown in the Appendix, pg. 84.

QUESTIONS PRESENTED HEREIN

Frommhagen presents the same questions as posed by the appellants in *Thomas Tone Storer v. Edmund G. Brown, Jr.*, No. 72-812.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Appellant cites as the constitutional and statutory provisions involved those cited in *Thomas Tone Storer v. Edmund G. Brown, Jr.*, namely: Constitution of the United States, First and Fourteenth Amendments and Article I, Section 2, Clause 2; Sections 6830, 6831, 6833, 6864, 6430 and 6082 of the California Elections Code.

STATEMENT OF CASE

Laurence H. Frommhagen was an independent (non-partisan) candidate for the United States House of Representatives in the Twelfth Congressional District (Counties of Santa Cruz, Monterey and San Luis Obispo) of California, but was unable to have his name appear on the ballot due to the enforcement by Secretary of State Edmund G. Brown, Jr., of those sections of the California Elections Code complained of in this action.

Frommhagen, a research scientist who holds a Ph.D. degree from the University of California at Berkeley in biochemistry, has been active for fifteen years in the federal and state legislatures as a citizen consultant in the areas of scientific research, health and welfare.

In 1971 Frommhagen, who for the previous nineteen years had been a registered member of the Republican Party and who had worked actively in the campaigns of a number of Republican candidates, reacted to the growing authoritarian character of the Republican Party (which now borders on fascism, as revealed by the Watergate scandal) by changing his voter registration to that of the Democratic Party. It was not long until he became disillusioned with the Democratic Party as he viewed the splintering of the several ideological and social groups which constitute that "coalition" and the control of that party by special interests and 'fat cats' not very different from those who constitute the upper echelons of the Republican Party.

In March of 1972, in a move which paralleled that of Thomas Tone Storer, Frommhagen announced that he had changed his voter registration to that of "decline to state" (the only category presently provided by California law to nonpartisans) and that he would seek election to Congress as a nonpartisan candidate (Appendix, pg. 66). In June of 1972 Frommhagen and his supporters, who had encountered the same disabilities from the operation of certain sections of the California Elections Code as had Thomas Tone Storer, filed a Motion for Intervention in the action of *Storer v. Brown, Jr., et al.* (Appendix, pg. 56). That motion was granted by the Court on July 20, 1972 (Appendix, pg. 68). Frommhagen represented himself in the Court below (Appendix, pg. 69 through 83) and presented oral argument before the Court. After the adverse decision of the District Court (Appendix, pg. 84 et seq.), Frommhagen filed a separate appeal to this Court, largely because he wished to be disassociated from the motives, allegations and objectives of Communist candidates Hall and Tyner, whose concurrent action had been consoli-

dated in the Court below with *Storer v. Brown, Jr.* Frommhagen, who does not speak from any feelings as to persons but who admits to a strong aversion against communist doctrine, believes that any member of a political party, Communist or otherwise, who seeks to masquerade as a nonpartisan, engages in a species of intellectual dishonesty which should not be foisted upon gullible or ignorant members of the general public. However, the problem of identifying true nonpartisans will not be resolved in this forum, but rather is a matter with which only the State legislature can deal. Indeed Frommhagen has expended much effort in recent days consulting with members of the California Legislature as to how the Elections Code might be changed not only to end discrimination against nonpartisan candidates but as to how to identify bona fide nonpartisan candidates for the benefit of the voting public.

It is Frommhagen's earnest belief that political parties, controlled by large business or labor interests and by those of great wealth, can no longer, in theory or in practice, minister in an effective and credible manner to the needs of a complex, ever more rapidly changing, society. Homo sapiens will survive only if men, motivated not by a party's special interests, but by objectivity, rationality and compassion, are permitted to govern the nation with the consent of the citizenry. Frommhagen is not so much interested in running for office as he is in establishing that nonpartisans, as guaranteed by the United States Constitution, may be a candidate for office on an equal footing with party candidates. There can be no doubt that party agencies have so seized control of legislative, executive and judicial functions at all levels of government that the State of California has been able to discriminate against nonpartisan candidates by means of

those sections of the California Elections Code complained of in this action.

That discrimination was directed not only against Storer and Frommhagen but also against their co-plaintiffs, members of the Democratic and Republican Parties as well as Independents, who desire to support Storer and Frommhagen by signing the nomination papers of the two candidates.

SUMMARY OF ARGUMENT

In view of the fact that the very competent Brief of Appellants in *Storer v. Brown, Jr.*, No. 72-812 states fully the arguments of Frommhagen, and in order to avert redundancy, Frommhagen adopts and incorporates by reference the Summary of Argument in said Brief of Appellants.

In the following sections certain arguments are presented to reinforce and augment those in the Brief of Appellants in *Storer v. Brown, Jr.*

I.

THE FREE CIRCULATION OF NOMINATING PETITIONS IS VITAL TO AN UNFETTERED ELECTORAL SYSTEM

In *Jenness v. Fortson*, 403 U.S. 431 (1971) the Court commented favorably upon the unrestrictive independent nomination procedure in the State of Georgia by stating that said State "imposes no suffocating restrictions whatsoever upon the free circulation of nominating petitions." That procedure in the State of Georgia, which equates to that which Frommhagen accepts as a fair and reasonable alternative to the California procedure, provides for obtaining the signatures of 5% of the eligible electorate on the nominating petition, but permits a six

month period in which to gather the signatures. In addition, the voter may sign the nominating petition of a nonpartisan candidate even though he signs the petition of another candidate and even though the citizen votes in the primary election.

The restrictions placed by California upon the gathering of signatures on the nonpartisan's nomination papers serve no other purpose than to hobble the nonpartisan candidate in violation of those constitutional provisions which dictate that all candidates be on an equal footing if they meet age and citizenship requirements. Indeed an unfettered nonpartisan nomination procedure is the purest expression of constitutional intent.

II.

THERE ARE NO ALTERNATIVES TO AN UNFETTERED NONPARTISAN NOMINATION PROCEDURE

In his representations to the Court below appellee Brown urged that Storer and Frommhagen enjoyed perfectly acceptable alternatives in those sections of the California Elections Code which permit new parties to appear on the ballot and which provide for write-in votes.

It is indicative of the rigidity engendered by the devotion of the appellee and of the members of the Court below that it was even suggested that a nonpartisan form a party to sustain and promote his candidacy. If Frommhagen were to so forsake his principle, he would have to form a state-wide party by obtaining a number of signatures in excess of the total number of registered voters in the Twelfth Congressional District of California, simply to run as a candidate for Congress in that district.

As to the write-in procedure Justice William O. Douglas stated the situation well in *Williams v. Rhodes*, 393 U.S. 23, at page 35:

"... Furthermore, even when operative, the write-ins are no substitute for a place on the ballot.

To force a candidate to rely on write-ins is to burden him with disability. It makes it more difficult for him to get elected, and for the voters to elect him ..."

Anyone who has observed elections over the years and at different levels of government is impressed with the waste of time and effort which is the lot of a great majority, approaching 99%, of write-in candidacies.

III.

A LAUNDRY-LIST BALLOT WILL NOT RESULT FROM AN UNFETTERED NONPARTISAN NOMINATION PROCEDURE

The Secretary of State in Georgia (Exhibit 1) has stated that no candidates qualified to run as independent candidates for the United States House of Representatives in the general elections of 1968, 1970 and 1972.

It is apparent that the requirement that a nonpartisan obtain the signatures of at least 5% of the electorate, and the $480. filing fee, are sufficient to preclude a laundry-list ballot.

Furthermore, this Court observed in *Williams v. Rhodes*, 393 U.S. 23, at page 33:

"But the experience of many States, including that of Ohio prior to 1948, demonstrates that no more than a handful of parties attempts to qualify for ballot positions even when a very low number of signatures, such as 1% of the electorate, is required. It is true that the existence of multitudinous fragmentary groups might justify some regulatory control but in Ohio at the present time this danger seems to us no more than "theoretically imaginable."

There is no reason to believe that the situation would be different in respect to individuals seeking ballot position as nonpartisans within the context of an unrestrictive nonpartisan nomination procedure.

IV.

A NONPARTISAN CANNOT BE CONSIDERED TO BE A "PARTY-HOPPER" OR "PARTY RAIDER"

There is no logic in the position of the appellee and of the members of the Court below that a nonpartisan, if he chooses to run as a candidate, is a "party-hopper" or a "party-raider."

Those phrases, together with the phrase "laundry list ballot", are little more than code words for discrimination against nonpartisans by devoted members of political parties, especially the two dominant parties, who fear greatly the rising numbers of independents and the increasing sophistication of a swelling multitude of voters who do not hesitate to split their voting tickets (Appendix, pg. 77).

V.

THE STATE MAY NOT ENFORCE LOYALTY TO A PARTY

Several years ago voters in the State of South Carolina were required to take an oath at the primary election to "abide by the results of said primary and to support in the next general election all candidates nominated in said primary." In *Redfearn v. Board of Canvassers*, 234 S.C. 113, 107 S.E. (2) 10, the Supreme Court of that State struck that oath on the ground that the State could not legally or constitutionally enforce party loyalty.

California has gone a step further by forbidding party members as well as nonpartisans who vote in the primary elections to sign effectually the nomination papers of a nonpartisan. If, on the other hand, a nonpartisan or a party member wishes to support a nonpartisan candidate by signing his nomination papers that elector must forego the primary election, thereby forfeiting the right to vote on questions before the electorate, such as bonds, composition of local boards and commissions, state propositions, etc., and, in the case of party members, to vote on party candidates. That provision of the California Elections Code is so obviously in violation of the First and Fourteenth Amendments to the United States Constitution as to be seen readily as a mechanism for suffocating the right of a nonpartisan to stand for election on an equal footing with the party candidate.

VI.

THE RULING OF THE DISTRICT COURT THAT NONPARTISANS WHO VOTE IN THEIR PRIMARY ELECTION MAY NOT SIGN THE NOMINATION PAPERS OF A NONPARTISAN DEMONSTRATES THE BIAS OF THAT COURT IN FAVOR OF POLITICAL PARTIES AND THEIR CANDIDATES

Despite arguments to the contrary by plaintiffs and defendants in the Court below, the District Court, in a remarkable demonstration of its bias in favor of political parties, ruled that even nonpartisans who vote in their nonpartisan primary may not sign the nominating papers of a nonpartisan candidate. It is significant that the Court did not attempt to justify that ruling. The Opinion of that Court, which rings with such phrases as "laundry list ballots", "party-raiding" and "party-hopping" is mani-

festly the work of those devoted more to political parties than to the Constitution of the United States. It is to be fervently hoped that at some time in the future the appointments of members of the judiciary may be freed from the constraints of party agencies.

VII.

DISCRIMINATION AGAINST NONPARTISAN CANDIDATES IS SHOWN IN THE FACT THAT THE CALIFORNIA ELECTIONS CODE PERMITS PARTY CANDIDATES EIGHT MONTHS OF ACCESS TO THE PUBLIC MEDIA BUT ONLY TWO MONTHS TO THE NONPARTISAN CANDIDATE

The party candidate who wins his party's nod at the primary election enjoys access to the public media, and equal time by provision of Section 315 of the Federal Communications Act for exposure in the public media, from his filing as a primary candidate in March to the general election in November. By contrast, the nonpartisan candidate becomes a qualified candidate, by definition of the Regulations of the Federal Communications Commission, with access to the public media equal to the party candidate only in the September before the November general election, a short period of two months. In his Motion to Affirm (pg. 18) appellee states that this situation is "merely part and parcel of the legal and practical differences in the logistics of political life" (yet another code phrase for discrimination). Rather it is no accident that the party members who framed those sections of the California Elections Code postponed the gathering of signatures on the nominating petition to three weeks in August and the certification of the nonpartisan candidate to early September.

There is no reason, except for an intent to discriminate, why nonpartisan candidates cannot gather their signatures on their nominating petitions during the period of March through June, when party candidates are campaigning for the primary election, and why nonpartisan candidates cannot be certified as soon as they file their nominating petitions complete with the signatures of 5% of the eligible electorate. However, the California Elections Code has been so constructed as to give party candidates "first crack" at the electors.

CONCLUSION

For all the reasons mentioned in this Brief and in the Appellant's Brief in *Storer v. Brown, Jr.*, appellant respectfully urges that the judgment of the United States District Court for the Northern District of California should be reversed.

Respectfully submitted,

LAURENCE H. FROMMHAGEN
In Propria Persona
P.O. Box 326
Soquel, California 95073

Dated: May 29, 1973

EXHIBIT 1

SECRETARY OF STATE
214 State Capitol
Atlanta
30334

May 25, 1973

Mr. Laurence H. Frommhagen
P.O. Box 326
Soquel, California 95073

Dear Mr. Frommhagen:

This will acknowledge receipt of your letter of recent date. The Official Tabulations which were originally certified to you also contained the election results for U.S. Senator and Governor for the years 1968, 1970 and 1972.

You would be correct in stating that no independent qualified to have his name placed on the Ballot for U.S. House of Representatives in 1968, 1970 and 1972.

If I can be of further service to you, do not hesitate to call on me.

Sincerely yours,

Ben W. Fortson, Jr.
Secretary of State

BWF:jc